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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,785	09/26/2001	Gary K. Loda	SUREB-58450	3304
39607	7590	01/11/2007	EXAMINER	
PETER K HAHN LUCE, FORWARD, HAMILTON, SCRIPPS, LLP. 600 WEST BROADWAY SUITE 2600 SAN DIEGO, CA 92101			JASTRZAB, KRISANNE MARIE	
		ART UNIT		PAPER NUMBER
				1744
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/11/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/964,785	LODA ET AL.
	<b>Examiner</b>	<b>Art Unit.</b>
	Krisanne Jastrzab	1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 25 October 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 34,35,47,48 and 51-66 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 34,35,47,48 and 51-66 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 34-35, 47-48 and 51-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kotler et al., U.S. patent No. 6,504,898 B1 in view of Bergeret et al., U.S. patent No. 4,852,138 and Allen et al., U.S. patent No. 6,492,645.

Kotler et al., clearly teach a method and apparatus for optimizing the irradiation of products wherein maximum and minimum dose rates are determined for the given geometry, such as thickness, of the product to be treated and the intensity of the radiation applied is modified such that the entire product receives the optimal amount of radiation consistently. The modification of the radiation is achieved by means adjustably modulating the shape of the radiation generated by moving plates into and out of the path of radiation during the radiation process. See column 1, lines 20-25, column 3, lines 10-15, column 4, lines 1-15 and 40-50, column 6, line 45, column 7, lines 25-35 and lines 65-68, column 8, lines 1-47, column 9, lines 25-60, and column 12, lines 60-68.

Bergeret et al., teach a method and apparatus for optimizing the irradiation of products to control the max/min radiation dose received which includes the teaching that irradiation can be performed in any known manner, either a cylindrical source with the products being rotated such that all sides are irradiated, or a two source configuration where the products are passed there between such that opposite sides

are controllably irradiated. Bergeret et al., further teach that a larger number of products can be processed with a two source panel system, then a cylindrical system because the total quantity of products that can be irradiated simultaneously is larger. See column 2, lines 56-68, column 3, lines 1-23 and lines 65-68, column 4, lines 1-16, column 5, lines 32-38 and claim 2.

Allen et al., clearly teach a method and apparatus for the irradiation of articles wherein a conveyor system is provided having two converging conveyors moving at different speeds and having a gap therebetween with radiation sources provided on both sides thereof to irradiate products carried by the conveyors. Allen et al., further teaches the desire to maintain a uniform dose rate throughout the articles being sterilized. See column 5, lines 50-68, column 6, lines 33-50 column 8, lines 7-15 and column 9, lines 40-all of column 10.

It would have been well within the purview of one of ordinary skill in the art to substitute plural sources for irradiation and the conveyed system, as taught in Bergeret et al. and Allen et al., in the system of Kotler et al., because it would allow for the simultaneous treatment of a larger number of products, including those with non-uniform geometries, while maintaining the dose control functions with adjustable radiation.

***Response to Arguments***

Applicant's arguments filed 10/25/2006 have been fully considered but they are not persuasive.

Applicant continues to argue that configuration of Kotler as set forth in the rejection by the Examiner would render Kotler inoperable because the results recited are dependent on rotation of the articles, but the Examiner would disagree and would note that the combination set forth above functions to achieve the results of Kotler with plural sources and article conveyance which eliminates the need for rotation while still maintaining optimum dose control.

Applicant further argues that the moving plates of Kotler fail to meet the limitation of radiation reducing means being moved into and out of the path of radiation, however, the Examiner would continue to disagree and note the adjustable collimator is made up of moving plates which are moved into and out of the path of radiation to control the path width thereof.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Thurs. 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Krisanne Jastrzab  
Primary Examiner  
Art Unit 1744

January 8, 2007